

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Defendants ARC Imperial Valley and Arturo Santos (“Defendants”) removed this action from the Imperial County Superior Court. The notice of removal was based on federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441(a). (Notice of Removal [“NOR”] ¶ 8.) Defendants move to dismiss the first amended complaint; Plaintiffs Ofelia Eguia and Rosalinda Magallanes (“Plaintiffs”) move to remand. Both motions have been fully briefed and are decided on the papers submitted.

1. Procedural History

The FAC, filed on January 31, 2012 AC") in the Imperial County Superior Court, asserts state law causes of action only including wrongful termination, harassment, discrimination, and

1 infliction of emotional distress. (NOR ¶ 2.) Plaintiffs based these causes of action on public
 2 policy grounds, California Government Code §§ 12940(h) and 12653, and California Labor
 3 Code § 1102(f). (NOR, Ex. 1, pp. 37-65.) On March 1, 2012, Defendants filed an answer to the
 4 FAC, and on March 9, 2012, filed an amended answer asserting the affirmative defense of the
 5 federal enclave doctrine. (NOR, Ex. 1, pp. 88, ¶ 15.)

6 The notice of removal, filed on May 9, 2012, was premised on the applicability of the
 7 federal enclave doctrine. [Doc. # 1.] Defendants base their removal on their recent receipt of a
 8 quitclaim deed from the City of Calexico granting land to the United States government, which
 9 encompasses the West Port of Entry in Calexico. (NOR ¶ 11.) Defendants' counsel attests that
 10 he received this document on May 5, 2012, from the Chicago Title Company. (Post Decl. ¶ 2.)
 11 Further, Defendants cite the Declaration of Defendant Arturo Santos, which states that Plaintiffs
 12 worked at the West Port of Entry, as further evidence of federal enclave jurisdiction. (NOR, Ex.
 13 2, pp. 102-03.) Defendants claim that this evidence – the declaration of Arturo Santos and the
 14 deed for the West Port of Entry – establishes the basis for removal and the exclusively federal
 15 nature of the claims arising on the West Port of Entry. (Defs' Opp'n 2:15-18.) Defendants allege
 16 that these documents constitute “a copy of an amended pleading, motion, order or other paper”
 17 from which it can be first determined that the case is removable. (NOR ¶ 11.)

18 On May 10, 2012, Defendants moved to dismiss the case. [Doc. # 4.] On June 8, 2012,
 19 Plaintiffs filed a motion to remand the FAC to the Imperial County Superior Court. [Doc. # 8.]
 20 Plaintiffs also requested attorney's fees and costs.

21 **2. Legal Standard for Removal**

22 The Court addresses the issue of subject matter jurisdiction first as “[t]he requirement that
 23 jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the
 24 judicial power of the United States’ and is ‘inflexible and without exception.’” *Steel Co. v.*
 25 *Citizens for a Better Env’t*, 523 U.S. 83, 94-94 (1998) (quoting *Mansfield, C & L. M. Ry. Co. v.*
 26 *Swan*, 111 U.S. 379, 382 (1884)).

27 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*
 28 *Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by Constitution or

1 statute, which is not to be expanded by judicial decree.” *Id.* (internal citations omitted). “It is to
 2 be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the
 3 contrary rests upon the party asserting jurisdiction.” *Id.* (internal citations omitted); *see also*
 4 *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

5 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly
 6 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);
 7 *see also Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *O'Halloran v. University*
 8 *of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The strong presumption against removal
 9 jurisdiction means that the defendant always has the burden of establishing that removal is
 10 proper.” *Gaus*, 980 F.2d at 566; *see also Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d
 11 709, 712 n.3 (9th Cir. 1990); *O'Halloran*, 856 F.2d at 1380.

12 “The propriety of removal . . . depends on whether the case originally could have been
 13 filed in federal court.” *Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 163 (1997). “Federal
 14 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”
 15 *Gaus*, 980 F.2d at 566. The Court’s removal jurisdiction must be analyzed on the basis of the
 16 pleadings at the time of removal. *See Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*,
 17 159 F.3d 1209, 1213 (9th Cir. 1998).

18 Defendants may remove any action filed in state court over which federal district courts
 19 have original jurisdiction. *See* 28 U.S.C. § 1441(a). Generally speaking, a party may bring a case
 20 within the jurisdiction of the federal courts by demonstrating the existence of either: (1) diversity
 21 of citizenship, under 28 U.S.C. § 1332; or (2) a federal question, under 28 U.S.C. § 1331.
 22 Defendants removed this action based on federal question jurisdiction under 28 U.S.C. § 1331.
 23 (NOR ¶ 3.) Pursuant to the statute, federal courts have subject matter jurisdiction of “all civil
 24 actions arising under the Constitution, laws, or treaties of the Untied States.” 28 U.S.C. § 1331.

25 Under 28 U.S.C. § 1446(b), a defendant must file a notice of removal either (1) “within
 26 thirty days after the receipt by the defendant . . . of a copy of the initial pleading,” or (2) “if the
 27 case stated by the initial pleading is not removable, a notice of removal may be filed within
 28 thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended

1 pleading, motion, order or other paper from which it may first be ascertained that the case is one
2 which is or has become removable.” 28 U.S.C. § 1446(b).

3 Notice of removability under § 1446(b) is determined through examination of the four
4 corners of the applicable pleadings, not through the subjective knowledge or a duty to make
5 further inquiry. *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). Section
6 1446(b)’s first thirty-day requirement, thus, is triggered by defendant’s receipt of an “initial
7 pleading” that reveals a basis for removal. *Id.* If no ground for removal is evident in the initial
8 pleadings, the case is “not removable” at that stage. *Id.* In this circumstance, the notice of
9 removal may be filed within thirty days after defendant receives “an amended pleading, motion,
10 order or other paper from which it can be ascertained from the face of the document that removal
11 is proper.” *Id.*

12 In cases where the action may be removable despite defendant never having “received”
13 any pleading or “other paper” demonstrating removability, § 1446(b)’s “other paper” language is
14 read so as to not include a defendant’s own records. *B.C. v. Blue Cross of California*, 2012 WL
15 12782, at *5 (C.D. Cal. Jan. 3, 2012)(We now conclude that notice of removability under §
16 1446(b) is determined through examination of the four corners of the applicable pleadings, not
17 through subjective knowledge or a duty to make further inquiry.). The rationale behind this
18 reading is that when the evidence suggests that a defendant is or should be on notice of an
19 action’s removability despite it not being “plain” on the face of the complaint, defendants are
20 effectively granted permanent removal power. *Kohan Prod’s Ltd. v. Comerica Bank*, 2010 WL
21 956402, at *4 (C.D. Cal. Mar. 11, 2010). As such, a removal filed before a plaintiff has served a
22 paper on the defendant demonstrating removability is premature. *B.C.*, at *7.

23 **3. Discussion**

24 In their motion to remand, Plaintiffs argue that under the recognized meaning of “other
25 papers,” the documents offered by Defendants in support of removal do not satisfy 28 U.S.C. §
26 1446(b). (Mot. to Remand at 9.) Specifically, Plaintiffs contend that the quitclaim deed and the
27 Santos Declaration are not the types of “other papers” that courts have found to satisfy § 1444(b)
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1 and therefore, Defendants' removal was improper. (Mot. to Remand at 9.)¹

2 Because the parties agree that the FAC does not disclose the grounds for removal (Opp'n
 3 at 4; Reply at 2.), the Court must analyze the language any "amended pleading, motion, order or
 4 other paper from which it may first be ascertained that the case is one which is or has become
 5 removable" to determine whether removal is proper. 28 U.S.C. § 1446(b). Here, the docket does
 6 not indicate, nor do the parties contend, that any amended pleading, motion, or order supports
 7 removal on the basis of federal question jurisdiction. Further, Defendants concede that
 8 "Plaintiffs . . . did not serve Defendants with any 'other paper' disclosing a basis for removal[.]"
 9 (Opp'n at 2.) The only purported "other papers" that Defendants offer to demonstrate the
 10 existence of federal question jurisdiction under § 1446(b) are the quitclaim deed and a
 11 Declaration from Plaintiffs' former employer and co-Defendant, Mr. Santos. (*See* NOR.) Both
 12 are proffered documents that were created or obtained by the Defendants in support of their
 13 removal. (NOR ¶ 22.) Plaintiffs did not provide these documents, whether in the course of
 14 litigation or otherwise. (NOR, Ex. 3, ¶ 2.) As discussed above, courts in the Ninth Circuit have
 15 interpreted § 1446(b)'s "other paper" language so as not to include a defendant's own records.
 16 *B.C.*, at *7. Therefore, the Santos Declaration and quitclaim deed are not allowable "other
 17 papers" as contemplated by § 1446(b) and cannot form the basis for removal. *Id.*

18 Although Defendants contend that Plaintiffs' argument regarding the Santos Declaration
 19 and quitclaim deed is improper, their exact argument in favor of examining these documents is
 20 unclear. (*See* Opp'n at 7-10.) Defendants cite a number of cases in support of the proposition
 21 that the Court "may examine [Defendants'] removal notice and supporting affidavits . . . to
 22 clarify whether the action [Plaintiffs' present] in fact arises under federal law." (Opp'n at 9-10.)
 23 These cases are not applicable here, as the issue in those actions was whether the plaintiff's
 24 complaint properly asserted federal jurisdiction. Most notably, the *Schroeder* court found that
 25 "[i]t is proper to use the petition for removal to clarify the action plaintiff presents and to

26
 27 ¹ While the Court recognizes that Plaintiffs' motion to remand focuses primarily on the
 28 timeliness of Defendants' removal based upon an assertion of a federal cause of action, the motion also
 addresses the appropriateness of the removal itself.

1 determine if it encompasses an action within federal jurisdiction.” *Schroeder v. Trans World*
 2 *Airlines, Inc.*, 702 F.2d 189, 191 (9th Cir. 1983).

3 Defendants also cite *Fung v. Abex Corp.*, 816 F. Supp. 569, 571 (N.D. Cal. 1992) where
 4 the court noted that “failure to indicate the federal enclave status and location of the exposure
 5 will not shield plaintiffs from the consequences of this federal enclave status.” But in *Fung*,
 6 plaintiff’s action arose from asbestos exposure that occurred during his employment by the
 7 United States Navy at a Navy facility on federal procured submarines which were docked at
 8 Naval facility. The court therefore could conclude that a plaintiff cannot “avoid federal
 9 jurisdiction simply by omitting from the complaint federal law essential to his claim, or by
 10 casting in state law terms a claim that can be made only under federal law.” *Id.* The federal
 11 enclave status was apparent from the face of the complaint even though not explicitly stated by
 12 plaintiff.

13 Unlike *Fung*, the allegations in the FAC in the present case do not suggest federal enclave
 14 status. And the parties agree that Plaintiffs’ FAC, on its face, does not disclose a federal
 15 question. (Opp’n 4; Reply at 2.) Specifically, Defendants assert that “Plaintiffs’ complaint did not
 16 disclose grounds for removal at all[.]” (Opp’n at 4.) Instead, Defendants argue that the basis for
 17 federal question jurisdiction is the Santos Declaration and the quitclaim deed that Defendants
 18 contend establishes federal enclave status. (Opp’n at 4.) Defendants concede that “[they] did not
 19 have grounds to remove the action until [they] obtained the deed for the West Port of Entry that
 20 proves enclave status.” (Defs’ Opp’n 4:4-5.) As discussed above, this document, as well as the
 21 Santos Declaration, are not suitable “other papers” under § 1446(b). *B.C.*, at *7.

22 Thus, because Defendants base their removal solely on documents from their own record
 23 – the quitclaim deed and Santos Declaration – and not any “amended pleading, motion, order or
 24 other paper” received from Plaintiffs, their notice of removal is premature. The Court, therefore,
 25 will grant Plaintiffs’ motion to remand and deny without prejudice Defendants’ motion to
 26 dismiss.

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4. Conclusion

In light of the foregoing, Defendants have not met the burden of establishing removal jurisdiction. Because subject matter has not been established at this time, the Court must remand the case to the state court: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

Plaintiffs also seek attorney's fees and costs from Defendants under 28 U.S.C. § 1447(c). (Mot. to Remand at 10.) Courts may require costs and actual expenses, including attorneys' fees, incurred as a result of removal when removal is objectively unreasonable. 28 U.S.C. § 1447(c); *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 140-41 (2005). Here, Defendants' arguments, although unpersuasive, do not rise to the level of objectively unreasonable.

Based on the foregoing, **IT IS ORDERED:**

1. Defendants' motion to dismiss is **DENIED WITHOUT PREJUDICE**;
 1. Plaintiffs' motion to remand is **GRANTED**;
 2. Plaintiffs' request for attorneys' fees and cost under 28 U.S.C. § 1447(c) is **DENIED**;
 3. The Clerk of the Court is directed to return this action to the Superior Court of the State of California for Imperial County, Case No. ECU06685.

IT IS SO ORDERED.

DATED: December 6, 2012

M. James Lorenz
M. James Lorenz
United States District Court Judge

COPY TO:

HON. PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL